

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of David DUNCAN.

App. Serial No.: 09/776,730

Art Unit: 2654

Filed: February 6, 2001

Examiner: Armstrong, Angela A.

Title: METHOD AND APPARATUS FOR PACKING AND DECODING AUDIO  
AND OTHER DATA

**PETITION UNDER 37 C.F.R. § 1.181(a) FOR  
WITHDRAWAL OF THE HOLDING OF ABANDONMENT**

Mail Stop **Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This communication is responsive to the Notice of Abandonment for the subject application mailed March 1, 2005. Applicant hereby petitions for withdrawal of the holding of abandonment for Applicant's alleged failure to file a Response to the Office Action mailed August 11, 2003. As Applicant's representative, Mark B. Eisen, timely filed a proper Response to the Office Action, the holding of abandonment is in error and is hereby requested to be withdrawn.

The facts of the instant case are as follows:

1. A non-final Office Action was mailed August 11, 2003, with a shortened period for reply ending November 11, 2003.

2. Applicant's representative filed a Response, a Petition for Extension of Time for two months, and a duly executed Certificate of Facsimile Transmission by facsimile transmission on January 9, 2004. A true and correct copy of the documents filed on January 9, 2004, along with a copy of the facsimile confirmation showing successful transmission to the USPTO, is attached as Exhibit A.

3. Applicant's representative spoke to Examiner Patrick Edward on April 27, 2004, who called Applicant's representative to advise that no Response had been filed. Applicant's representative advised Examiner Edward that a Response had been filed.

4. On April 28, 2004, Applicant's representative further faxed to the USPTO copies of the filed Response, Petition for Extension of Time, Certificate of Facsimile transmission, and confirmation of successful facsimile transmission. A true and correct copy of this communication, along with a copy of the facsimile confirmation showing successful transmission to the USPTO of the communication, is attached as Exhibit B.

5. No further communication was received until June 15, 2004. On that day, Examiner Vijay Chawan called the office of Applicant's representative and spoke with patent clerk Liz Forster to inquire whether a Response had been filed. Ms. Forster advised Examiner Chawan that the Response was filed on January 9, 2004, and further that a copy had been sent to the USPTO on April 28, 2004.

6. Examiner Chawan noted that the Examiner's file did not contain a Response and further advised Ms. Forster that she would call back if the Response needed to be re-sent to the USPTO. No subsequent call was received from Examiner Chawan. A true and correct copy of a Memorandum to File prepared by Ms. Forster reflecting this conversation on June 15, 2004, is attached as Exhibit C.

7. Believing that the filed Response of Applicant's representative had been located, Applicant's representative filed a request on February 3, 2005, requesting an indication of when further action would be taken in this case. A true and correct copy of the Applicant's representative's request of February 3, 2005, is attached as Exhibit D.

8. The next communication received from the USPTO was a Notice of Abandonment mailed March 1, 2005.

9. In response to the Notice of Abandonment, Applicant's representative filed a Petition Under 37 C.F.R. 1.181(a) requesting withdrawal of the holding of abandonment by facsimile transmission on May 16, 2005. A true and correct copy of the Petition and Declaration of Facts filed by Applicant's representative, along with a copy of the facsimile confirmation showing successful transmission to the USPTO, is attached as Exhibit E.

10. On February 8, 2007, Applicant's representative spoke with the USPTO Office of Petitions, who informed Applicant's representative that the Petition could not be located.

The Office of Petitions further suggested that the Petition must have been lost or misfiled by the USPTO.

As Applicant's representative timely filed a Response to the Office Action mailed August 11, 2003, Applicant respectfully submits that the abandonment of the subject application, without fault of the Applicant or Applicant's representative, is thus unwarranted and requests reconsideration and withdrawal thereof. Accordingly, Applicant also respectfully requests entry of the timely filed Response to the Office Action.

Although it is believed that no fee is due for this Petition, the Office is hereby authorized and requested to charge any fees required for this Petition against Deposit Account No 04-1679.

If any point remains that is deemed best resolved through a telephonic conversation, the Office is hereby requested to contact the undersigned directly.

Respectfully submitted,



Mark C. Comtois

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February 21, 2007

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